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No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1998

RAUL VALENTIN

Petitioner

vs.

G. Thomas

JUDGE/GATES; MICHAEL J. GARRITY; CATHERINE COYLE; ROBERT RAIGER; individually and officially; LEBANON COUNTY; LEBANON, THE CITY OF

Respondents

Petition for Writ of Certiorari to the U.S. Supreme Court

PETITION FOR WRIT OF CERTIORARI

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26 pp

QUESTIONS PRESENTED

1.) Is a Common Pleas Court Judge entitled to Judicial Immunity where he takes an AIDS victim out of prison and sentences him to life (banishment) away from his home and family, forever, under threat of bogus charges, where the prisoner had never been before the judge or his Court previously, had committed no crime, and had not completed an albeit unlawful sentence imposed by a local district magistrate and there was no appeal or legal issue pending before him or any other court?

2.) Does Stump v. Sparkman 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed. 2d 231 (1978) stand for the proposition that a judge of a Court of Common Pleas is immune from suit and acting within his jurisdiction when, under the general sentencing authority in a states' criminal law system, the judge sua sponte takes a person who has never appeared before him and who has no legal duty to be before him, but is forcefully brought before the court at the judges direction, and the judge imposes a life sentence of banishment under threat of incarceration including bogus charges because that person has AIDS?

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OPINIONS BELOW

The Memorandum and Order of the United States District Court dismissing petitioner's civil rights action was filed on August 15, 1997. It was docketed at Civil Action No. 1:CV-97-597. The Memorandum Opinion of the United States Court of Appeals for the Third Circuit, upholding the District Court, was filed on June 30, 1998. It was docketed at No. 97-7481.

STATEMENT OF JURISDICTION

The order of the District Court was entered on August 15, 1997 consistant with its jurisdiction under 28 U.S.C. §1331 and 28 U.S.C. 1343 (a)(3) and (4) to hear petitioner's claim under 42 U.S.C. §1983 for a violation of petitioner's 14th Amendment rights. The Third Circuit Court of Appeals upheld the district court on June 30, 1998. It assumed jurisdiction under 28 U.S.C. §1291. This Court has jurisdiction under Rule 10 (a) and (c) of the Rules of the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourteenth Amendment to the United States Constitution:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No

state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

8th Amendment to the United States Constitution:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

On July 13, 1987 the petitioner was arrested in Lebanon Pennsylvania after an alleged shouting match at a local

swimming pool. He was taken before a local magistrate, Catherine Coyle, who immediately sentenced him to 30 days in jail, and then was taken to the local police station and chained to a wall. A parade of police officers and staff visited the room where he was held, to gawk and jeer at him, for the next 2 hours. Petitioner, a transsexual, was clad in a bikini, and had been taking injections to enhance his breast size. His request to change into his street clothes was consistently denied. Raul Valentin was then taken to the Lebanon County jail where he was again incarcerated. He was placed in the "hole" and a blood test was taken on July 16, 1987, some three days later. On July 24, 1987 Valentin was told that he had tested HIV positive for AIDS. He was immediately taken before Judge Gates, a judge of the Court of Common Pleas of Lebanon County Pennsylvania. Valentin had no lawyer and was given no chance to get one. He had not appeared in front of Gates before. There was no appeal pending. There was no request for relief from any person or entity put to the Court. Gates simply ordered him brought to his court room. When Valentin was brought before Gates, the judge told him that his kind of people were not wanted in Lebanon. He was ordered to leave Lebanon and never come back. Gates told Valentin that if he ever cone back to Lebanon for the rest of his life, that he would be put back in prison for many years. Gates also told Valentin that he would find other charges to bring against him and would see that Valentin did state, as opposed to local, jail time. When Valentin asked Gates if this was legal, Gates emphatically said "yes

it is". When Valentin asked again if he could have a lawyer, Gates never really answered him, but again told Valentin that he was ordered out of Lebanon for the rest of his life and that if he ever came back to Lebanon he would do hard time in state prison. Valentin was then escorted by police officers to the local bus station and was given a one way ticket to New York City. In New York Valentin took to the streets to survive. He lived under a bridge and ate out of garbage cans. He prostituted himself and estimates he had sexual contact with more than 1000 men while living away from his family under Judge Gates banishment for life order. Approximately 4 years ago Raul Valentin's AIDS infection began to manifest itself. He now lives in a hospice in Staten Island New York where he expects to spend his last days.

When plaintiff filed a civil rights action under 42 U.S.C. §1983 the district court dismissed all defendants except Judge Gates, based upon statute of limitations objections. The district court then dismissed judge Gates also, reasoning that he was entitled to judicial immunity because a common pleas court judge in Pennsylvania has "concurrent jurisdiction with district justices over criminal matters ordinarily handled by the latter judicial officers" District Court Memorandum at page 9. Valentin had not been before Gates or his court previously and could not lawfully be sentenced or re-sentenced under Pennsylvania law for life or anything else for that matter. Gates falsely told Valentin that District Justice Coyle, a local magistrate, had suspended his 30 day sentence for disorderly conduct.

However Coyle did suspend his sentence 5 days after Valentin had been ordered out of town for life. But Gates still could not have any lawful right to sentence or resentence Valentin since he had done nothing wrong. Having AIDS is not a crime. The district court also reasoned that because judges normally do sentencing that "Judge Gates act was a judicial one", and that "since plaintiff complains about being sentenced, he must have dealt with the judge in his judicial capacity." District Court Memorandum at page 10. Petitioner then timely appealed to the United States Court of Appeals for the Third Circuit. On June 30, 1998 the appeal court, in a 3 page opinion, which it specified was not for publication, simply stated that the district court opinion "adequately explains and fully supports its order". Third Circuit Memorandum Opinion page 3. Raul Valentin has now appealed to this court.

REASONS FOR GRANTING THE WRIT

The rule of law setting forth judicial immunity standards rests upon Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed. 2d 331 (1978), which at page 356 grants judges immunity from civil suit when (1) the judge had jurisdiction over the subject matter before him and (2) he is performing a judicial act. The 7th Circuit devised the following test based upon its reading of Stump; judicial immunity applies (1) unless the act complained of is taken in the clear absence of jurisdiction, and (2) unless the act is not a judicial act. It is a judicial act if it is (1) a function normally performed by a judge

and (2) the aggrieved party has dealt with the judge in his judicial capacity, otherwise it is not a judicial act. See Lopez v. Vanderwater, 620 F.2d 1229 (7th Cir. 1980). In simple form, the judge needs some type of jurisdiction, and he must perform a judicial act, or presumably he will not enjoy the benefits of judicial immunity. Here, Valentin was sentenced for a summary violation by a local district magistrate. As he was serving that sentence he was tested for AIDS. He was found to be HIV positive. He was taken from the county jail just 11 days into his sentence, upon the order of the defendant Judge Gates who had him brought in handcuffs to his courtroom. Gates lied to Valentin and told him that the district justice had suspended his sentence. He told Valentin, who questioned him, that what was happening to him was legal, refused to acknowledge his request for a lawyer, and then sentenced him to a life sentence ie. banishment from his home and family under threat of bogus charges. Gates had absolutely no jurisdiction over Valentin. If the magistrate suspended his sentence then Valentin was as free as any member of this court. Furthermore, Valentin had never been before Gates before, on any case. He had no new or additional charges pending. There were no motions, petitions, appeals, or legal matters of any kind having anything to do with Valentin pending before Judge Gates. To say that Judge Gates had jurisdiction over Valentin equates to saying that Judge Gates had jurisdiction to bring a member of this court, who might have been visiting Pennsylvania, before him, and he could sentence him or her to

incarceration because Judge Gates has general authority under the laws of Pennsylvania to handle the judicial aspects of the criminal justice system. The District Court and the Third Circuit Court of Appeals greatly expands the holding in Stump. It is one thing to hold that a Judge can't be sued when he acts in excess of his jurisdiction. Indeed that's what occurred in Stump. But it is not consistent with Stump to hold that merely because a judge has general statutory authority under a states' criminal justice system, and thus the power thereunder to sentence those lawfully in front of him, that he can bring divers different persons, innocent of any crime, in whom he has no judicial interest, and who have done no wrong other than contracting a loathsome decease, before him, and use the power of his office, and the threats of the police, to banish him for life under threat of bogus charges. Neither Stump, nor any other case in American jurisprudence grants immunity from suit to any judge for the exercise of judicial power in such a totally arbritary and capricious fashion. Respect for the American judiciary and the public approbation necessary for the administration of justice can never be built upon fictions that so distort the needs of public policy in an independent judiciary, beyond the dictates of common sense. The Third Circuit holding in this case takes Stump to such an extreme that there is virtually no further the Courts can go. If Judge Gates is immune from suit then the only intellectually honest holding for this court is to declare that under no circumstances can any judge be

sued, for any civil rights violations, jurisdiction notwithstanding. If this is the status of current law, it would serve the nation's interest to so hold and at least the public would then know that a judge can do whatever he or she pleases, at anytime, to anyone, even those over whom the court has no jurisdiction (adopting the bootstrap rationale of this case) without fear of reprisal. Valentin does not fall under either the Stump or Lopez tests. The Third Circuit has set a new standard for judicial immunity. That standard requires this Courts attention under U.S. Supreme Court Rule 10(c). And it should be reported. That standard holds that by virtue of being a judge, anything said or done in a courtroom is absolutely privileged. This is not fair, it is not just, and it does not serve any public or judicial interests let alone promote the proper need for an independent judiciary.

CONCLUSION

Judicial immunity is judge made. It is a doctrine based upon the sound demands of public policy. Defining jurisdiction to include this case does not improve public esteem. If a president can be sued while in office over a simple negligence standard, the high quality of our current judiciary is hardly demonstrated by the need to extend a useful fiction beyond the bounds of common sense, deceiving, or necessity. A child knows this is extreme. Will this benefit our system?

Don Bailey
Counsel of Record
Attorney for Petitioner

APPENDIX A - MEMORANDUM OPINION OF THE COURT

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 97-7481

RAUL VALENTIN,

Appellant,

vs.

JUDGE GATES; MICHAEL J. GARRITY; CATHERINE COYLE; ROBERT RAIGER, individually and Officially; LEBANON COUNTY; LEBANON, THE CITY OF

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(D.C. Civil No. 97-CV-00597)
District Judge:
Honorable William W. Caldwell

Submitted Under Third Circuit LAR 34.1(a)

June 8, 1998

BEFORE: SCIRICA and NYGAARD, Circuit Judges and KATZ, *District Judge.
(Filed June 30, 1998)

MEMORANDUM OPINION OF THE COURT

NYGAARD, Circuit Judge,

Appellant, Raul Valentin, appeals from an order of the district court which dismissed his complaint for failure to state a claim, alleging as error the issues listed in Paragraph I, taken verbatim from appellant's brief. Because we conclude that the district court did not err, we will affirm.

I.

The allegations of error asserted by appellant are as follows:

1. Is Judge Gates entitled to immunity?

2. Are the remaining defendants entitled to a defense based upon the applicable two year statute of limitations?

3. Should the district court have dismissed the conspiracy claim pled below?

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* Honorable Marvin Katz, Senior District Judge for the United States District Court for the Eastern District of Pennsylvania, sitting by designation.

II.

Generally, when we affirm by Memorandum Opinion and Judgement, we "briefly set forth the reasons supporting the court's decision...." United States

Court of Appeals for the Third Circuit, Internal Operating Procedure ("I.O.P.") 5.4. The reasons for an opinion are to instruct the district court, to educate and inform the attorneys and parties, and to justify our decision. We use a Memorandum Opinion in cases in which a published opinion is rendered unnecessary because the opinion has no institutional or prescedential value. See I.O.P. 5.2. In this case, however, we have concluded that the opinion filed by the district court adequately explains and fully supports its order. Hence, we believe it unnecessary to offer reasons, in addition to those given by the district court, as to why we will affirm. It is sufficient explanation to say that, essentially for the reasons given by the district court in its opinion dated the 15th day of August 1997, we will affirm.

III.

In sum, because we find no error, we will affirm the order of the district court dated the 15th day of August, 1997.

APPENDIX B - MEMORANDUM OPINION IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA DATED AUGUST 15, 1997

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RAUL VALENTIN,	**:CIVIL ACTION NO.**
Plaintiff	**:1:CV-97-597**
	:
vs.	**:**
	:
JUDGE GATES; MICHAEL J. GARRITY; CATHERINE COYLE; ROBERT L. RAIGER; Individually and Officially; LEBANON COUNTY; AND THE CITY OF LEBANON;	**:**
Defendants	**:**

MEMORANDUM

I. Introduction.

We are considering four motions to dismiss under Fed.R. Civ. P. 12 (b)(6); one filed by defendants, Lebanon County, Robert Raiger and Michael Garrity, another by defendant City of Lebanon, a third by defendants Catherine M. Coyle, and the fourth by defendant G. Thomas Gates.

This is an action under 42 U.S.C. §1983 accompanied by pendent state-law claims. The plaintiff, Raul Valentin, alleges that the defendants violated several federal constitutional rights in circumstances arising from criminal proceedings against him in Lebanon County

about 10 years ago.

Because we are dealing with a motion to dismiss, we must accept as true the factual allegations in the complaint and construe any inferences to be drawn from them in the plaintiff's favor. See Kost v. Kozakiewicz, 1 F.3d 176 (3d Cir. 1993). With this standard in mind, we set forth the background to this litigation, as the plaintiff alleges it.

II. Background

The plaintiff avers that he was a stripper and male prostitute who, because of prior contact with law enforcement, was known to all the defendants. He is also a male transsexual and in July 1987 he was receiving hormone shots that gave him a feminine appearance, including enlarged breasts. On July 13, 1987, he was at a public swimming pool in Lebanon, wearing a bikini, when he was berated by a young white female. He exchanged words with the woman and the police were called. He was charged with threatening her with a knife or gun (which he denies) and taken into custody.

Still in his bikini because police officers would not let him change into the street clothes he had with him, the plaintiff was handcuffed by one hand to a wall of a holding cell at the Lebanon Police Department so that a "steady stream of onlookers" could gawk at him as if he were a "circus animal." (Complaint, paragraphs 29 and 30). When plaintiff exposed himself in retaliation for his treatment, Department staff later falsely told the newspapers that he had masturbated.

The plaintiff was taken before defendant Coyle, a district justice. No lawyer was appointed for him, and she found him guilty of disorderly conduct for the incident at the pool. She also committed him to Lebanon County Prison because he was unable to pay the fine immediately. The plaintiff, still attired in a bikini, was led past jeering inmates at the prison. He was tested for AIDS and was found to be positive. On July 24, 1987, eleven days after he entered the prison, defendant Garrity, the warden, told him about the diagnosis and that "the County wanted to get rid of him." (Complaint, paragraph 38).

At the Lebanon County Courthouse, the plaintiff was taken before defendant Gates, then a Judge of the Court of Common Pleas of Lebanon County and now a senior Judge in the state-court system. Judge Gates told him the following:

1. District Justice Coyle had suspended his sentence;

2. they did not want his "kind of people around here";

3. the plaintiff should "get out of Lebanon and never come back for the rest of (his) life";

4. if the plaintiff did not leave, he would be put back in jail on the disorderly conduct charges and they would find other charges to bring against him and he would be placed in state prison for years.

(Complaint, 40-42 and 45) (brackets added).

Judge Gates then ordered the plaintiff to leave on a bus the next day for New York City and again threatened him with jail if he returned to Lebanon. (Id., 46). The plaintiff left on the bus

after being escorted to it by police officers. (Id.,47)

While Judge Gates was ordering the plaintiff to leave Lebanon, the plaintiff asked the Judge if what was being done to him "was legal" and if "it could de done to him." (Id., 43). He indicated he wanted to stay and that he wanted a lawyer. Judge Gates told him that it was indeed legal and never addressed him of his rights before he left for New York City. (Id. 53).

While he was New York, the plaintiff prostituted himself in order to live, (50), lived under a bridge for his first three years ago, his "AIDS began to manifest itself." (51). He now lives in a hospice on Staten Island and believes he does not have long to live (52).

The plaintiff alleges that Judge Gates "unlawfully sentenced him to life away from his home and family", (53), and that he is still fearful of the Judge's "unlawful and unconscionable order" not to return to Lebanon County (54).

The plaintiff filed his complaint on April 16, 1997. In count I, the plaintiff seeks redress from all defendants for violation of his federal constitutional rights to freedom of association with his family, his right to counsel, and his rights to be free from cruel and unusual punishment, unlawful seizure of his person, and arbritary acts of government. The plaintiff avers that the defendants conspired "to deprive him of his rights to be free of an unlawful Court order," (60), because he is a transsexual with AIDS. (63). In count II, he alleges that the same conduct violated the Pennsylvania Constitution. He seeks compensatory and punitive damages and

"such other relief as the court may deem appropriate including injunctive relief..." (65).

III. Discussion.

All four motions argue that the suit is barred by the statute of limitations since a two-year limitations period applies to civil rights actions and all the events giving rise to the complaint occurred more than two years ago. In addition, defendant Coyle's motion argues that the complaint fails to plead conspiracy with specifity and that she is entitled to absolute judicial immunity. Further, both Coyle's and Judge Gates's motions argue that. (1) 42 U.S.C. §1983 prohibits injunctive relief against judicial officers unless declaratory relief is unavailable or a declaratory judgement has been violated; and (2) there is no present case or controversy when both Judge Gates and District Coyle are no longer active members of the bench and any threat was made 10 years ago.

We conclude that the defense based on the statute of limitations is valid as to defendants Lebanon County, Robert Raiger, Michael Garrity, the City of Lebanon, and former District Justice Catherine Coyle. The statute of limitations for a section 1983 action is the Pennsylvania statute of limitations for a personal injury action. See Kost v. Kozakiewicz, 1F.3d 176, 189-190 (3d Cir. 1993). That period is two years. Id. The plaintiff avers that all of these defendants acted in July 1987 to violate his civil rights, almost 10 years before he filed his complaint on April 16, 1997. Clearly, any federal claim against these defendants is thus time-barred.

Further, because, as defendant Coyle notes, conspiracy claims must be plead with specificity See Young v. Kann, 926 F.2d 1396, 1405 n.16 (3d Cir. 1991); Rose v. Bartle, 871 F.2d 331, 366 (3d Cir. 1989, these defendants cannot be implicated in the conduct of the remaining defendant, Judge Gates. They will therefore be dismissed from this action.

We reject the plaintiff's attempt to avoid the limitations defense by invoking the discovery rule. While we borrow the state statute of limitations for this action, we must apply federal law to determine when the cause of action accrues and hence when the statute begins to run. See Smith v. Wambaugh, 887 F. Supp. 752, 755 (M.D. Pa. 1995). Normally, a cause of action begins to run when the plaintiff knows of his injury and its cause. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1385-86 (3d Cir. 1994). However, the discovery rule extends the time of accrual if the plaintiff, in the exercise of reasonable diligence, could not have known of his injury until the limitations period had expired. Id. at 1386 See also New Castle County v. Halliburton NUS Corp., 111 F.3d 1116, 1124 (3d Cir. 1997).

In this case, the plaintiff argues that he could not have known of his injury until he talked with his current lawyer in late 1996 and found out his rights had been violated. As further support, he relies on his allegations that he asked Judge Gates if what was being done to him was proper and Judge Gates misled him by telling him yes. Plaintiff asserts he was entitled to rely

on these assurances from Judge Gates.

We reject this argument. To begin with, the discovery rule is not applicable here because the plaintiff's own allegations show that he knew of his purported injuries and who inflicted them at the time they happened. His causes of action thus accrued in July 1987. Second, even if we apply the discovery rule, the claims against these defendants are still time-barred because the plaintiff has not exercised reasonable diligence. The only explanation he offers for his delay is that when he questioned Judge Gates about his treatment, the Judge assured him it was legal. Accepting the word of a person you suspect of having violated your constitutional rights is not reasonable diligence.

As to defendant Gates's motion, we cannot dismiss the damages claim against him on the basis of the statute of limitations. This defense fails because he is charged with ordering the plaintiff to stay out of Lebanon County and never return. If true, this order is still in effect, and as the plaintiff asserts, acts on him now to prohibit his entrance into the County. Thus, the statute of limitations cannot bar the damage claim against Judge Gates.

The defendant also argues that there is no case or controversy between him and the plaintiff since, even if he made a threat or statement 10 years ago, with the passage of time there is no indication it would be enforced now. We disagree. The plaintiff pleads that the order is still in effect. The plaintiff's complaint thus adequately pleads a live controversy.

Nonetheless, we believe the damages claim fails under the defense of absolute judicial immunity. We note that Judge Gates disclaims reliance on this defense at this time, viewing the allegations of the complaint as being too vague and lacking in detail to allow him to present it on a motion to dismiss. He points out that the complaint fails to allege a docket number for a state-court case, an allegation that would bolster such a defense because it would indicate that the defendant had acted in a judicial capacity in issuing the purported banishment order.

This position is too conservative. In our view, the complaint supplies the necessary averments to assert the defense, and to do so successfully. Since the defendant indicates a desire to raise judicial immunity, and since the analysis is straightforward, we see no reason to prolong this litigation awaiting the defendant's motion on that ground. We will address the defense now.

Under the doctrine of absolute judicial immunity, for sound public policy reasons we need not detail here, judges any not be sued for damages for conduct taken in their judicial capacity unless they clearly lacked jurisdiction to act. The bar against damages applies even if the judge acted in excess of his jurisdiction and did so maliciously or corruptly. Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978). The court in Lopez v. Vanderwater, 620 F.2d 1229 (7th Cir. 1980), interpreted Stump as providing the following test for determining when judicial immunity applies: (1) the act complained of must not have been taken in

the clear absence of jurisdiction, and (2) the act must be a "judicial act." Id. at 1233. In turn, the act is a judicial one if (1) it is a function normally performed by a judge and (2) the aggrieved party has dealt with the judge in his judicial capacity.

In the instant case, despite the plaintiff's objections, Judge Gates was not acting in the clear absence of jurisdiction, as defined by the Supreme Court in Stump. Under Pennsylvania law, the Courts of Common Pleas have concurrent jurisdiction with district justices over criminal matters ordinarily handled by the latter judicial officers. See Commonwealth v. Allem, 367 Pa. Super. 173, 532 A.2d 845 (1987); McCracken v. Commonwealth, Department of Transportation, __ Pa. Commw. ____, 660 A.2d 700 (1995). Under Stump, this general jurisdiction over criminal matters is sufficient to assert the immunity defense.

Further, Judge Gates' act was a judicial one. The plaintiff's complaint characterizes his action as an "unlawful Court order," (60), and "unlawful [] sentence[]," (53) (brackets added), and a "life sentence away from home," (65), to which the plaintiff is still subject. (62). Issuing orders and sentences are acts normally performed by a judge, and since the plaintiff complains about being sentenced, he must have dealt with the judge in his judicial capacity. This conclusion is not altered by the absence of a docket number or other routine indications of a normal case. See Stump.

We will therefore dismiss the damages claim against Judge Gates. We turn now to the claim for injunctive

relief.

Since the plaintiff is seeking to overturn a sentence he alleges was entered in connection with a criminal proceeding against him, his exclusive remedy in federal court is to apply for a writ of habeas corpus, not file a section 1983 action for injunctive relief. See Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994) (citing Preiser v. Rodriguez, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973)). (Alternatively if the order is viewed as a civil one, we lack jurisdiction to overturn it under the Rooker-Feldman doctrine. See Ernst v. Child and Youth Services of Chester County, 108 F.3d 486 (3d Cir. 1997). petition for cert. filed, No 96-9456 (U.S. June 6, 1997).

The defendant also argues that section 1983, as amended by the Judicial Improvements Act of 1996, Pub L. No. 104-317, §309(c), prohibits injunctive relief against a judge "unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. §1983. The defendant points out that neither of these conditions have been satisfied here. We agree and this is an additional reasons for dismissing the request for injunctive relief.

Since we have disposed of all the federal claims, we decline to exercise supplemental jurisdiction over the state-law claims against the defendants and will dismiss those without prejudice. See 28 U.S.C. §1367(c)(3).

We will issue an appropriate order.

William W. Caldwell
United States
District Judge

Date: August 15, 1997

1. We also note that, if the order is viewed as an injunction, the plaintiff can always apply to the Court of Common Pleas to vacate it. See Pa.R. Civ. P. 1531(c).